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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,400	07/18/2003	Lewis Conrad Keller	CFLAY.00212	4684
22858	7590	10/31/2005	EXAMINER	
CARSTENS YEE & CAHOON, LLP P O BOX 802334 DALLAS, TX 75380			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/622,400	<b>Applicant(s)</b> KELLER ET AL.	
	<b>Examiner</b> Drew E. Becker	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Response to Amendment***

1. The finality of the rejection of the last Office action is withdrawn. New rejections are set forth below. The after-final amendment of October 17, 2005 has been entered and claim 13 has been canceled.

### ***Specification***

2. The abstract of the disclosure is objected to because it exceeds 150 words. Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: the first line of the specification does not include the current status of the parent application.

Appropriate correction is required.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No. 6,620,448 B2 in view of Keller [Pat. No. 4,869,911]. It would have been obvious to one of ordinary skill in the art to incorporate the farinaceous materials and moisture levels of Keller since these were commonly extruded materials and moisture levels (column 2, lines 16-36).

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 5 recites "it". It is not clear what "it" is.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller [Pat. No. 4,869,911] in view of Weinstein et al [Pat. No. 5,639,485].

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Keller teaches a method comprising the steps of plasticizing a farinaceous food mixture containing 5-17% plasticizer (column 2, line 22) including monosaccharides, polysaccharides, and alcohols (column 3, lines 12-51), a moisture content of 9-17% (column 2, line 25), directing the flow to a central passage of a co-rotating twin screw extruder (column 4, lines 8-17), extruding the flow through a nozzle (column 4, line 51), the product having a moisture content of 4-8% and water activity level of 0.30-0.45 (column 2, line 35), the plasticizer including 4-6% corn syrup solids, 0.5-2.0% sucrose, 3-6% polydextrose, and 0.5-2.5% glycerol (column 3, lines 53-59), 6-15% plasticizer (column 4, line 1), corn meal (column 3, line 3), and a reduction in cross-sectional area of about 9.2:1 (column 4, lines 51-63). Keller does not recite imparting a cleft and injecting a fluid additive, a die insert with a capillary channel and peripheral reservoir manifold, and a fluid supply port and fluid additive source. Weinstein et al teach a method of extruding complex patterns by using a die insert to impart a cleft (Figure 2, #20), injecting a fluid additive into the cleft (Figure 4, #48), capillary channels (Figure 3, #52, 54, 56), a peripheral reservoir (Figure 4, #58), and a fluid supply port and source (Figure 2, #18). It would have been obvious to one of ordinary skill in the art to incorporate the fluid injection means of Weinstein et al into the invention of Keller since both are directed to methods of extruding farinaceous materials, since Keller already included the concept of co-extrusion (column 5, lines 17-35), and since the fluid injection means of Weinstein et al provided an effective means for providing multi-colored food product with complex patterns which were valued by consumers (column 1, lines 5-34).

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11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller, in view of Weinstein et al, as applied above, and further in view of Parsons et al [Pat. No. 6,509,049].

Keller and Weinstein et al teach the above mentioned concepts. Keller and Weinstein et al do not recite a static mixer. Parsons et al teach a food extruder including static mixer elements (Figure 1, #46). It would have been obvious to one of ordinary skill in the art to incorporate the static mixer of Parsons et al into the invention of Keller, in view of Weinstein et al, since all are directed to methods of extruding foods, since Weinstein et al was directed to making complex patterns in the extruded product (abstract), and since the static mixer elements of Parsons et al would have provided a means for making a swirled or marbled effect (column 7, line 13).


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wisdom et al [Pat. No. 3,615,675], Benson [Pat. No. 2,858,219], Smeaton [Pat. No. 6,170,979], and King [Pat. No. 6,132,079] teach methods of extruding foods.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
DREW BECKER  
PRIMARY EXAMINER  
10-27-05